

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At as session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in
the City of Charleston on the 21st day of February 2019.

CASE NO. 18-0674-WS-GI
TIMBERLINE FOUR SEASONS UTILITIES, INC.

General investigation into the management practices of
Timberline Four Seasons Utilities, Inc.

CASE NO. 18-0745-WS-C
ROBERT AND JANET DEAL
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-0921-WS-C
DAVID AND JAN ROSENAU
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-0762-WS-C
KAREN HENSON-BIBBEE
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1434-WS-C
MRK III, INC.
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-0781-WS-C
QUENTIN T. RAYHART
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1480-WS-C
DONALD ELMER CASAVECCHIA
v.
TIMBERLINE FOUR SEASONS
UTILITIES.

CASE NO. 18-0793-WS-C
ROBERT J. GILCHRIST
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1497-WS-C
TIMBERLINE ASSOCIATION, INC.
v.
TIMBERLINE FOUR SEASONS
UTILITIES.

CASE NO. 18-0811-WS-C
STEPHEN CALLENDER SCHIMPF
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1506-WS-C
JEFFREY BREUNIG
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1507-WS-C
RUTLEDGE P. HAZZARD JR.
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1513-WS-C
NANCY HANKIN
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1515-WS-C
JERRY A. JORDAN
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1516-WS-C
PAULA JEAN HALLBERG
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1518-WS-C
F. DANIEL LYONS
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1523-WS-C
DIANE E. DAMRON
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1524-WS-C
STUART BRADFORD WOOD
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1525-WS-C
JEFFREY L. AND GINA PALMER
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1538-WS-C
TIMOTHY K. SHUBA
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1544-WS-C
JOSEPH ROSS
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1546-WS-C
BARBARA T. ROSENTHAL
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

CASE NO. 18-1547-WS-C
GEORGE AND JANICE SUTTON
v.
TIMBERLINE FOUR SEASONS
UTILITIES, INC.

COMMISSION ORDER

This Order adopts the Recommended Decision of the Administrative Law Judge (ALJ) and issues this order to authorize the Commission Staff to immediately seek an Order from the Circuit Court of Tucker County attaching the assets of Timberline Four

Seasons Utilities, Inc. (TFSU), and placing TFSU under the sole control and responsibility of Canaan Valley Public Service District (CVPSD) as receiver.¹

Unless the utility assets are transferred to CVPSD to act as responsible receiver, the record in this case indicates a significant risk that funds will continue to be misappropriated, utility facilities will continue to deteriorate, and threats to public health and safety, as well as to livelihoods and the economy in the Canaan Valley will continue.

DISCUSSION

Adequate evidence has been presented during the proceeding before the ALJ that establishes that TFSU is “unable or unwilling to adequately serve its customers or has been actually or effectively abandoned by its owners, or that its management is grossly and willfully inefficient, irresponsible or unresponsive to the needs of its customers.” (W.Va. Code §24-2-7(b)). The gross mismanagement of TFSU has caused significant economic harm to the Canaan Valley economy, has resulted in inadequate service to TFSU customers and demonstrates that it is imperative that a responsible receiver assume control of the water and sewer utility operations of TFSU as soon as possible.

The inadequate service, effective abandonment, and insufficient, irresponsible and unresponsive management by TFSU first came to the attention of the Commission in 2016. That proceeding resulted in an improvement plan that TFSU blatantly disregarded. The continued inadequate service and insufficient, irresponsible and unresponsive management of TFSU resulted in the present General Investigation.

The evidence in the current proceeding establishes, among other things, that TFSU:

- 1) improperly transferred large sums of money to its affiliates and encumbered its assets to secure debt to benefit affiliates (Recommended Decision at 12-16, 30, Finding of Fact numbers 4, 8, 14-21);
- 2) allowed its affiliates to accumulate large delinquencies for water and sewer utility services (Id. at 13, 30, Finding of Fact numbers 5, 7, 9, 10, 11);
- 3) distributed assets to owners or affiliates in excess of its retained earnings

¹ On February 7, 2019, Staff made a filing to correct and clarify the Recommended Decision issued by the ALJ. In this filing, Staff stated that it agreed with the ultimate conclusion reached by the ALJ that TFSU met the requirements under W.Va. Code §24-2-7(b) to be placed into receivership. No party has objected to the corrections requested by Staff in its Limited Exceptions. The corrections filed by Commission Staff on February 7, 2019, are adopted as summarized on Attachment A to this Order.

(Id. at 15-16, 30, Finding of Fact number 35);

4) failed to pay federal and public utility taxes and file tax returns (Id. at 16, Finding of Fact numbers 36, 37, 40);

5) has been non-responsive to customer complaints, did not answer its telephone when customers or Commission Staff called, and allowed both its phone line and electricity service for its office to be disconnected for non-payment (Id. at 16, 17, 26, 31, Finding of Fact numbers 46, 97, 104, 106, 107, 112);

6) does not provide adequate meter maintenance and testing in violation of Rule 6.1.a and 6.2.a. of the Commission Rules for the Government of Water Utilities, 150 C.S.R. 7 (Water Rules) (Id. at 19);

7) does not conduct adequate water and sewer line maintenance, tank maintenance or water line testing, and has excessive water line loss in violation of Water Rule 5.6.a; (Id. at 19, Finding of Fact numbers 56-60, 62, 63, 65-69);

8) has accumulated a large arrearage for unpaid invoices from its sewage treatment provider CVPSD (Id. at 23, Finding of Fact numbers 95 and 96);

9) has issued employee paychecks that are dishonored for insufficient funds and, therefore, has difficulty retaining and hiring a certified water operator as required by the West Virginia Bureau for Public Health. (Id. at 18, 29, 30, Finding of Fact number 51). Lack of a certified operator results in extended boil water advisories. The boil water advisories cause homeowners and tenants to fear that the water supplied to dwellings is unsafe, and has a negative impact on tourism in Tucker County and rental income for property owners (Id. at 18, 29, 85, Finding of Fact number 49, public comment at 25-27);

10) did not advise customers of the boil water advisory (Id. at 26);

11) has not reliably issued utility bills, collected revenues or credited customer accounts for bill payments (Id. at 17, 23, 24, 26, 30, Finding of Fact numbers 88 and 89);

12) failed to file its required 2017 water and sewer annual reports with the Public Service Commission in violation of Water Rule 2.4 (Id. at 16, Finding of Fact number 39);

13) lacks maps or drawings of its systems that are necessary for proper operation and maintenance, and are required by Commission Water Rule 2.6.a (Id. at 19, Finding of Fact number 55); and

14) is in need of machinery upgrades and calibrations and upgrades for its water treatment plant equipment and piping. (Id. at 19-21, Finding of Fact numbers, 71-82).

Prior to the hearing before the ALJ, TFSU admitted in a filing with the Commission that it was guilty of “gross negligence justifying placing the utility in the hands of a receiver.” Motion to Cancel Hearing filed December 7, 2018. At the hearing before the ALJ and in its post-hearing briefing, TFSU attempted to withdraw its own statement against interest, but made no efforts to pledge any future corrective actions to its financial abuse of the utility. It offered no solutions to the numerous operational difficulties testified to by various witnesses, and presented no witnesses of its own.

Moreover, TFSU shows no inclination to correct the situation. Notably, after issuance of the Recommended Decision on January 31, 2019, the Commission received a filing on February 11, 2019, from CVPSD stating that its sweep of a TFSU bank account authorized by the ALJ by Order issued November 1, 2018, failed due to insufficient funds. CVPSD stated that as a consequence of the failed sweep, TFSU remains in arrears for its payment due October 31, 2018, and is also delinquent for its January 2019 bill. CVPSD filing February 11, 2019.

CVPSD has been demonstrated by the evidence in this proceeding to be an appropriate receiver. (Recommended Decision at 22-23, 32, Finding of Fact numbers 90-94).

The Commission will seek an Order from the Circuit Court of Tucker County pursuant to W.Va. Code §24-2-7(b), attaching the assets of Timberline Four Seasons Utilities, Inc., and placing the company under the sole control and responsibility of Canaan Valley Public Service District as receiver.

FINDINGS OF FACT

The Findings of Fact set forth in the January 31, 2019 Recommended Decision, corrected as set forth in Attachment A, are adopted and incorporated herein.

CONCLUSION OF LAW

The Commission should petition the Circuit Court of Tucker County to attach the assets of TFSU and place TFSU under the sole control and responsibility of CVPSD as receiver, pursuant to W.Va. Code §24-2-7, because TFSU is unable or unwilling to adequately serve its customers, its management is grossly and willfully inefficient and irresponsible and unresponsive to the needs of its customers.

ORDER

IT IS THEREFORE ORDERED that the January 31, 2019 Recommended Decision is adopted, with the corrections indicated on Attachment A as the Final Order of the Commission incorporated herein.

IT IS THEREFORE RESOLVED that the Commission will seek an Order from the Circuit Court of Tucker County attaching the assets of Timberline Four Seasons Utilities, Inc., and placing the company under the sole control and responsibility of Canaan Valley Public Service District as receiver.

IT IS FURTHER ORDERED that the Staff Limited Exceptions to Correct and Clarify the Recommended Decision are granted.

IT IS FURTHER ORDERED that on entry of this Order these cases will be removed from the open docket of the Commission.

IT IS FURTHER ORDERED that the Executive Secretary serve this Order upon Frederick Herz and Tracy Herz of Timberline Four Seasons Utilities, Inc. and to counsel, Mr. Negley by certified mail, first class mail, and electronic service, to Commission Staff by hand delivery, and upon all parties of record who have filed an e-service agreement with the Commission by electronic service and upon all other parties by United States mail.

A True Copy, Teste,



Ingrid Ferrell
Executive Secretary

JML/rm
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Corrections² to the January 31, 2019 Recommended Decision
Case No. 18-0674-WS-GI and related complaint cases

1. The last full sentence in the first full paragraph on page 13 is corrected to read,

The affiliates were to pay ~~\$5,436.14~~ \$6,436.14 a month over a period of twenty-eight months beginning January 1, 2017.
2. The second sentence in the second full paragraph on page 13 is corrected to read,

No payments were made after ~~May~~ September 2017 on the arrearages.
3. The last sentence in the first full paragraph on page 15 is stricken.
4. The fourth sentence in the first full paragraph on page 16 is corrected to read,

Staff noted that the \$212,890 balance in the receivables from affiliates and the amount the affiliates owed for water and wastewater services as of December 31, 2016, of \$134,966 should be considered further reductions to equity capital.
5. Finding of Fact No. 25 on page 35 is corrected to read,

TFSU affiliates failed to repay the improper transfers as required by the Commission in the 2016 Timberline Case. It only repaid \$37,277 of the ~~\$134,966.24~~ \$180,212 required under the Order. (Staff Exhibit 1 at 1 through 6; Tr. 83, 84, 85, 86).

² Corrections are indicated in strike-through for deletions and underline for additions.